Curb on lie detectors weighed

Issue pits worker privacy, business' and states' rights

By Mitchell Zuckoff
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WASHINGTON—If no one laughs when a congressman compares George Washington with car pitchman Joe Isuzu, it's a safe bet he is discussing a bill that is explosive and has something to do with lies.

That was the case during a 10-hour House debate on legislation that would virtually ban businesses from using polygraph machines, or lie detectors, which have soared in popularity and each year are strapped to the arms of an estimated 2 million employees and job applicants.

The House version passed in November, and a similar bill sponsored by Sen. Edward M. Kennedy (D., Mass.), will be voted on Wednesday by the Senate Labor Committee, which Kennedy chairs. Although the issue has been before Congress for 25 years, long-awaited final action is expected by summer.

Much of the debate has focused on whether workers' privacy rights are being trampled in favor of an employer's right to prevent theft, and whether federal officials are trying to usurp state regulatory powers. But the core question is the reliability of the machines, which monitor heart rate, breathing and the skin's electrical conductivity.

When arguing for the ban, Rep. James Jeffords (R., Vt.), zeroed in on that issue by focusing on the founding father who couldn't tell a lie and the television car salesman who makes outrageous, impossible claims.

"One of the most troubling things about polygraphs is their perverse impact," he said. "An honest person is concerned about telling the truth; a liar is not. The guy on the Isuzu ads would pass a polygraph with flying colors. George Washington might have had trouble."

Backers of the exams respond to that view, fairly common among polygraph prohibitionists, with a mix of outrage and resigned acceptance.

"That simply displays a total lack of understanding of what the polygraph is all about," said Joseph P. Buckley, a Chicago polygraph examiner and a director of the American Polygraph Association. "It's clear we have done a poor job getting our message out."

He said the polygraph has proved to be an effective tool in reducing or exposing employee theft, but he added that the association supports federal regulation of the more than 5,000 polygraph examiners in the country.

"The APA is clearly of the view that abuses have occurred, both through the improper use of polygraphs by employers and the administration of polygraph tests by incompetent examiners," Buckley said.

The House bill, sponsored by Rep. Pat Williams (D., Mont.), would ban all employer polygraph use except by security, drug and defense companies. Kennedy's bill, co-sponsored by conservative Sen. Orrin Hatch (R., Utah), would prohibit pre-employment and random exams, but would allow tests under strict guidelines during an investigation of suspected theft. Neither would affect Pentagon, police or other official use in national security and criminal cases.

Scientific studies are used by both sides, but apparently the most extensive was a 1983 study by the U.S. Office of Technology Assessment that found little evidence to support polygraph use in the workplace.

"Since then, my assessment has only become more critical of polygraph tests because it is clearer and clearer that from a physiological point of view, the test doesn't indicate deceptiveness," said Leonard Saxe, a Boston University psychology professor who authored the study. "It is simply theater on the part of the polygraph examiner."

More than 40 states already have some kind of laws, from licensing of examiners to prohibitions against employer use. Illinois regulates examiners but does not ban the tests.

The issue of states' rights has been the source of the Reagan administration's opposition to the Kennedy and Williams bills.

"We think the states are better capable of handling it, and it would just create another layer of bureaucracy for the federal government," said Justice Department spokesman John Russell.

But proponents of the ban question the unanimity of the administration's opposition, citing incidents such as Secretary of State George P. Shultz's celebrated statement that he would never take a polygraph test.

The theft of an estimated $20 billion of goods each year by U.S. employees is the main reason a ban is rejected by businesses such as jewelers, hotel firms, restaurants and financial institutions.

They and their congressional supporters also say it is hypocritical to allow polygraph use for national defense but deny it to private employers.

"Polygraphs are accurate, they reduce theft and they give an employer a reliable means of verifying applicants' assertions," said Roger Middleton, counsel for the U.S. Chamber of Commerce, which is leading the fight against moves to ban or limit test use.

Kennedy's bill is supported by the National Retail Merchants Association and several other business groups, but both bills' strongest backers are unions and civil liberties groups, which say the key issue is privacy.

"The worst thing, the crucial bad point about polygraphs is they are a humiliating invasion of the privacy of the employee," said Judy Goldberg, lobbyist for the American Civil Liberties Union. "Even if they did work, we would still oppose them as a privacy violation."

Sen. Edward Kennedy

2/.